

For the periods identified above the corporation filed withholding and sales tax returns and reported a tax liability. However, the corporation did not make payment of the taxes shown on its returns.

The Bureau then began an investigation to determine which individuals could be held responsible for the taxes pursuant to Idaho Code §§ 63-3078 and 63-3627.

These statutes provide that a person required to collect, truthfully account for and pay the tax, on behalf of a corporation, who willfully fails to collect the tax, or truthfully account for and pay the tax, shall be liable for the unpaid taxes. In the case of the withholding taxes, the liability is a penalty equal to the total amount of the unpaid tax, and in the case of the sales tax, the liability is the actual unpaid taxes, and related penalty and interest. The Bureau determined the taxpayer was a person required to collect, and pay over withholding taxes on behalf of the corporation.

Specifically, the taxpayer is the corporate secretary and treasurer, and she signed many of the sales and withholding tax returns filed by the corporation for the periods in which the taxes were not paid. She signed loan documents with a bank on behalf of the corporation. She signed the original tax application for sales and withholding tax permits for the corporation as an owner of the corporation. All of this evidence tends to support the bureau's determination that she is a responsible party within the meaning of Idaho Code §§ 63-3078 and 63-3627.

In contrast, the taxpayer submitted a document signed by herself and by the President of the corporation. In the document, the parties contend that the taxpayer is not responsible but instead the President is the individual who had the sole responsibility for the payment of the taxes. The parties contend the taxpayer never wrote a check of any kind or filed any tax reports regarding state taxes. However, as noted above, the Commission received some sales and

withholding tax returns that contained the signature of the taxpayer. Thus, the statements of the taxpayer and President cannot be considered totally reliable. Based on these facts the Commission agrees with the Bureau that the taxpayer was responsible for the unpaid sales and withholding taxes of the corporation. However, there have been payments made by other parties to reduce the amount claimed due in the Notices of Deficiency.

WHEREFORE, the Notices of Deficiency Determination dated January 23 2004, is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty and interest:

<u>Tax</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Sales and use tax	\$25,914.44	\$ 6,478.63		
Less payments	<u>(\$ 4,820.97)</u>	<u>(\$ 2,702.12)</u>		
Sales & Use Tax Due	\$21,043.47	\$ 3,776.51	\$2,234.23	\$27,054.21
Withholding		\$10,316.45		<u>\$10,316.45</u>
			TOTAL	<u>\$37,370.66</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[Redacted]
[REDACTED]

Receipt No.
